REMARKS

Reconsideration and withdrawal of the rejections set forth in the Office Action are respectfully requested in view of this amendment and the following reasons. By this amendment, claims 1, 2, 5, 11, 12, 14, and 16 have been amended, claim 15 has been canceled, and new claim 17 has been added. Claims 1-14, 16, and 17 are pending in this application. The cancellation of claim 15 is made without prejudice or disclaimer to the subject matter contained therein.

Claims 1 and 14 have been amended to more specifically recite the claimed subject matter and provide better wording. Support for the amended features may be found at least in page 4, lines 7-22; and in page 10, line 24 through page 11, line 2 of the present application as originally filed.

Claims 2, 5, 11, and 12 have been amended to correct informalities and to be consistent with the language of independent claim 1.

Claim 16 has been amended to be in independent form and to correct informalities.

New claim 17 is dependent from claim 14 and recites similar features as claim 2.

It is respectfully submitted that the above amendments introduce no new matter within the meaning of 35 U.S.C. §132. For at least these reasons, entry of the present Amendment is therefore respectfully requested. Accordingly, Applicant requests reconsideration and timely withdrawal of the pending rejections for the reasons discussed below.

Application No. 10/591,479 Attorney Docket No. 27664U Reply to Office Action of February 4, 2009

Page 9 of 14

Rejections Under 35 U.S.C. §101

Claims 1-14 and 16 stand rejected under 35 U.S.C. §101 because the claimed

invention is directed to non-statutory subject matter. Specifically, the Examiner alleged

that:

(1) Claim 1 comprises units which are software embodiments; it is a misnomer to

label the invention a system when it comprises solely software. Software is

none of an apparatus, machine, manufacture and composition of matter. Claim

1 is not statutory.

(2) A 35 U.S.C. §101 process must be tied to another statutory class (such as a

particular apparatus) or transform underlying subject matter (such as an article

or materials) to a different state or thing. If neither of these requirements is met

by the claim the method is not a patent eligible process under 35 U.S.C. §101.

Claim 14 does not require a machine manufacture or composition of matter nor

does it transform any subject matter. As such it is non-statutory under 35 U.S.C.

§101.

As to the first reason for rejection, it is noted that claim 1 has been amended to

include a "data storage unit comprising a computer readable medium accessible thereto"

and operatively relate this data storage unit to other units recited in the claim. For

example, amended claim 1 recites a replacement unit configured to "replace pieces of data

from an intended incoming data stream to be received from the remote sender with

Application No. 10/591,479 Attorney Docket No. 27664U Reply to Office Action of February 4, 2009

Page **10** of **14**

substantially identical pieces of data retrievable from said data storage unit according to

said reference points" (emphasis added). By this amendment, Applicant believes that the

subject matter of claim 1 becomes statutory. See MPEP §2106.01. "When functional

descriptive material is recorded on some computer-readable medium, it becomes

structurally and functionally interrelated to the medium and will be statutory in most cases

since use of technology permits the function of the descriptive material to be realized. See

In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)(discussing

patentable weight of data structure limitations in the context of a statutory claim to a data

structure stored on a computer readable medium that increases computer efficiency) and

In re Warmerdam, 33 F.3d 1354, 1360-61, 31 USPQ2d 1754, 1759 (Fed. Cir. 1994) (claim

to computer having a specific data structure stored in memory held statutory product-by-

process claim)."

As to the second reason for rejection, it is noted that claim 14 has been amended to

include "accessing a computer readable media containing instructions for controlling a

computer system, the instructions comprising computer readable code for implementation

of" (emphasis added). By this amendment, Applicant believes that amended claim 14

becomes tied to another statutory subject matter, i.e., a computer readable medium

containing instructions for controlling a computer system, and therefore, becomes

statutory.

In view of these amendments and the above reasons, Applicant respectfully

requests withdrawal of the 35 U.S.C. §101 rejection of claims 1-14 and 16.

Application No. 10/591,479 Attorney Docket No. 27664U Reply to Office Action of February 4, 2009

Page 11 of 14

Rejections Under 35 U.S.C. §102

Claims 1, 5, 7-11, and 14-16 stand rejected under 35 U.S.C. §102(b) as being

anticipated by U.S. Patent No. 6,597,812 issued to Fallon, et al. ("Fallon").

Applicant respectfully submits that the rejections of independent claim 1 must be

withdrawn because the cited reference does not disclose, teach, or suggest all of the

features of the claimed subject matter. "Anticipation requires the disclosure in a single

prior art reference of each element of the claim under consideration." W.L. Gore & Assocs.

V. Garlock, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851

(1984). Further, "when evaluating the scope of a claim, every limitation in the claim must

be considered. U.S.P.T.O. personnel may not dissect a claimed invention into discrete

elements and then evaluate the elements in isolation.

Applicant respectfully submits that Fallon fails to teach every recited feature of claim

1. Specifically, claim 1, as amended, recites, inter alia:

... said reference points being computed by said identification unit and being

determined without using metadata and without prior placing of indications

within the data stream showing wherein the data begins ... (emphasis

added)

Applicant submits that this claim feature is not taught or suggested in Fallon. In

contrast to the presently claimed subject matter, Fallon does not teach using anchors to

Application No. 10/591,479 Attorney Docket No. 27664U

Reply to Office Action of February 4, 2009

Page 12 of 14

synchronize a data stream "without using metadata and without placing indications within

the data stream showing wherein the data begins." Since this distinctive feature is explicitly

recited in claim 1, Applicant submits that claim 1 is allowable over Fallon.

Claims 14 and 16 recite similar feature as claim 1, and thus are allowable for at least

this reason. Claims 5 and 7-11 depend directly or indirectly from claim 1, and thus are

allowable for at least this reason. New claim 17 depends from claim 14, and thus is

allowable for at least this reason. Claim 15 has been canceled without prejudice or

disclaimer, thereby rendering the rejection thereto moot.

Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. §102(b)

rejection of claims 1, 5, 7-11, 14, and 16. Since none of the other prior art of record

discloses or suggests all the features of the claimed subject matter, Applicant respectfully

submits that independent claims 1, 14, and 16, and all the claims that depend therefrom,

are allowable.

Rejections Under 35 U.S.C. §103

1. Claims 2 and 3 stand rejected under 35 U.S.C. §103(a) as being allegedly

unpatentable over Fallon in view of U.S. Patent No. 6,076,084 issued to Harlan ("Harlan").

Applicant respectfully submits that claims 2 and 3 are allowable because they

depend directly or indirectly from claim 1 and Harlan fails to cure the deficiencies of Fallon

noted above with regard to claim 1. In other words, since neither Fallon nor Harlan

teaches that "said reference points [are] computed by said identification unit and [are]

Application No. 10/591,479

Attorney Docket No. 27664U Reply to Office Action of February 4, 2009

Page 13 of 14

determined without using metadata and without prior placing of indications within the data

stream showing wherein the data begins," as recited in claim 1, even if one of ordinary skill

in the art happens to combine the teachings of Fallon and Harlan, the combined references

still do not teach this feature of claim 1. Hence, claims 2 and 3 are allowable at least

because they depend directly or indirectly from allowable claim 1.

2. Claims 6, 12, and 13 stand rejected under 35 U.S.C. §103(a) as being allegedly

unpatentable over Fallon.

Applicant respectfully submits that claims 6, 12, and 13 are allowable over Fallon

because they depend directly or indirectly from claim 1, which is allowable over the same

reference.

3. New claim 17 is allowable over Fallon and Harlan, whether taken alone or in

combination, because it depends from allowable claim 14, which is not subject to the 35

U.S.C. §§102 and 103 rejections.

Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. §103(a)

rejection of claims 2, 3, 6, 12, and 13. Since none of the other prior art of record, whether

taken alone or in any combination, discloses or suggests all the features of the claimed

subject matter, Applicant respectfully submits that independent claim 1, and all the claims

that depend therefrom, are allowable.

Application No. 10/591,479
Attorney Docket No. 27664U
Reply to Office Action of February 4, 2009
Page 14 of 14

CONCLUSION

Applicant believes that a full and complete response has been made to the pending Office Action and respectfully submits that all of the stated grounds for rejection have been overcome or rendered moot. Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicant's undersigned representative at the number below to expedite prosecution.

If an extension of time is necessary to prevent abandonment of this application and is not filed herewith, then such extension of time is hereby petitioned for under 37 C.F.R. §1.136(a). Any fees required for further extensions of time and any fees for the net addition of claims are hereby authorized to be charged to our Deposit Account No. 14-0112. Prompt and favorable consideration of this Reply is respectfully requested.

Respectfully submitted, THE NATH LAW GROUP

July 2, 2009

THE NATH LAW GROUP 112 South West Street Alexandria, VA 22314 (703)548-6284 Susanne Hopkins

Registration No. 33,247

Derek Richmond

Registration No. 45,771

Sung-Yeop Chung

Registration No. 64,130 Customer No. 20529